

ZONING BOARD OF APPEALS MINUTES

August 13, 2013 – Regular Meeting
Delta Township Administration Building

I CALL TO ORDER

Chairman Reed called the meeting to order.

II PLEDGE OF ALLEGIANCE

Chairman Reed led the Board and others present in reciting the Pledge of Allegiance to the Flag.

III ROLL CALL

Members Present: Arking, Barnhart, Hicks, Laforet, Newman, Parr, and Reed

Members Absent:

Others Present: Community Development Director Mark Graham and Assistant Planner Chris Gruba

IV SET AND ADJUST AGENDA

Chairman Reed asked if there were any changes to the agenda.

V APPROVAL OF MINUTES

MOTION BY LAFORET, SECONDED BY BARNHART, THAT THE AUGUST 6, 2013 SPECIAL MEETING MINUTES BE APPROVED. VOICE VOTE. CARRIED 7-0.

VI OLD BUSINESS

Nicole Schuiling's Appeal of the Zoning Administrator's Decision: Ms. Nicole Schuiling, owner of the property at 4513 Cranberry Court, is appealing the Zoning Administrator's decision regarding Sections 2.2.0, 3.17.0 (A)(1) and 9.2.0 of the Zoning Ordinance.

Community Development Director Mark Graham noted that in April of this year, the Planning Department received a complaint that there was a pot belly pig within the Park Meadow subdivision. He noted that staff subsequently followed up on the complaint and contacted the property owner, Nicole Schuiling, who admitted that she had a pot belly pig at

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her residence. Mr. Graham noted that Ms. Schuiling went before the Township Board regarding the keeping of her pig and then he sent her a letter advising her that it was his decision, acting in his capacity as Zoning Administrator, that the keeping of her pot belly pig was not permitted on her residentially zoned property. Mr. Graham said on June 4th, Ms. Schuiling filed an appeal of his decision which went before the Zoning Board of Appeals at their July 11th meeting at which point the Zoning Board of Appeals tabled the appeal and forwarded the appeal to the Township Board to see whether or not the Board would amend the Zoning Ordinance. He noted that the Township Board ultimately decided not to amend the Zoning Ordinance and the appeal went back before the Zoning Board of Appeals on July 9th for further discussion. Mr. Graham noted that a motion was made to reverse the Zoning Administrator's decision which failed in a 3-3 vote and that another motion was made to affirm the Zoning Administrator's decision which failed in a 3-3 vote. Mr. Graham said at that point, the Zoning Board of Appeals unanimously tabled the appeal until this evening's meeting.

Mr. Reed asked if there was anyone in the audience who would like to speak on this matter.

There was no one.

Mr. Hicks asked Ms. Schuiling if she had any comments to make.

Ms. Schuiling said she thought this case had been beat to death.

MOTION BY HICKS, SECONDED BY PARR, THAT THE PUBLIC HEARING BE CLOSED. VOICE VOTE. CARRIED 7-0.

Mr. Reed apologized for being absent from the Zoning Board of Appeals July 9th meeting when the appeal was tabled and he noted that he had a prior commitment. However, Mr. Reed indicated that he was able to read through the minutes of that meeting and he was fully aware of the discussion that took place.

Mr. Arking noted that the Zoning Board of Appeals was to determine whether or not the Zoning Administrator had interpreted the Zoning Ordinance correctly, specifically Sections 2.2.0, 3.17.0, and 9.2.0. Mr. Arking pointed out that the Zoning Board of Appeals didn't have the flexibility of determining what the law should be and that the Zoning Board of Appeals task was to affirm or reverse what the Zoning Administrator had determined.

MOTION BY ARKING, SECONDED BY BARNHART, THAT IN THE CASE OF NICOLE SCHUILING'S APPEAL OF THE ZONING ADMINISTRATOR'S DECISION, FILED ON JUNE 4, 2013, REGARDING THE RAISING OR KEEPING OF A POT-BELLY PIG ON A RESIDENTIALLY ZONED PROPERTY, THAT THE DELTA TOWNSHIP ZONING BOARD OF APPEALS MAKES THE FOLLOWING FINDINGS:

- **THAT THE INSTANT APPEAL INVOKES THE APPELLATE JURISDICTION OF THE ZBA INSOMUCH THAT IT IS AN APPEAL OF THE ZONING ADMINISTRATOR'S RULING, AS OPPOSED TO AN APPLICATION FOR A VARIANCE.**
- **THAT SECTION 2.2.0 OF THE DELTA TOWNSHIP ZONING ORDINANCE INCLUDES WITHIN ITS DEFINITION OF LIVESTOCK THE WORD "SWINE".**
- **THAT SECTION 1.3.0 A OF THE ZONING ORDINANCE INDICATES THAT WHERE ANY CONDITION IMPOSED BY ANY PROVISION OF THE ORDINANCE UPON THE USE OF ANY LOT IS EITHER MORE RESTRICTIVE OR LESS RESTRICTIVE THAN ANY COMPARABLE CONDITION IMPOSED BY ANY OTHER PROVISION OF THE ORDINANCE, THE PROVISION WHICH IS MORE RESTRICTED OR WHICH IMPOSES THE HIGHER STANDARD OR REQUIREMENT SHALL GOVERN.**
- **THAT SECTION 1.3.0 A IS NOT MERELY INSTRUCTIVE BUT IS COMPULSORY FOR THE REASON THAT THE WORD *SHALL* IS USED.**
- **THAT THE DEFINITION OF LIVESTOCK IN THE ORDINANCE IS MORE RESTRICTIVE THAN THE GENERAL REFERENCE TO HOUSEHOLD PETS IN THE ORDINANCE AND THEREFORE THE DEFINITION OF LIVESTOCK GOVERNS PURSUANT TO SECTION 1.3.0 A.**
- **THAT A ZONING BOARD OF APPEALS DECISION IGNORING THE FACT THAT THE LIVESTOCK DEFINITION INCLUDED SWINE IN ITS ENUMERATED LIST OF ANIMALS WOULD RENDER NUGATORY SECTION 1.3.0 A OF THE ORDINANCE.**
- **THAT THE APPELLANT'S PROPERTY AT 4513 CRANBERRY COURT IS ZONED RB, LOW DENSITY RESIDENTIAL.**
- **THAT ORDINANCES ARE TREATED AS STATUTES FOR THE PURPOSES OF INTERPRETATION AND REVIEW.**
- **THAT THE RULES OF STATUTORY CONSTRUCTION ARE WELL ESTABLISHED. FIRST AND FOREMOST, THE ZBA MUST GIVE EFFECT TO THE TOWNSHIP BOARD'S INTENT. IF THE LANGUAGE OF AN ORDINANCE IS CLEAR AND UNAMBIGUOUS, THEN THE PLAIN MEANING OF THE ORDINANCE REFLECTS THE BOARD'S INTENT**

AND ZBA CONSTRUCTION IS NOT PERMITTED. FURTHER, THE ZBA IS TO GIVE ORDINANCE LANGUAGE ITS ORDINARY AND GENERALLY ACCEPTED MEANING. HOWEVER, WHEN AN ORDINANCE SPECIFICALLY DEFINES A GIVEN TERM, THAT DEFINITION ALONE CONTROLS.

- THAT THE CLEAR AND UNAMBIGUOUS INTENT OF THE TOWNSHIP BOARD IN INCLUDING SWINE IN ITS DEFINITION OF LIVESTOCK, WAS TO INCLUDE ALL SWINE AS LIVESTOCK.**
- THAT SECTION 9.2.0 DOES NOT PERMIT THE “KEEPING OF LIVESTOCK IN THE RB ZONING DISTRICT”.**
- THAT THE CLEAR AND UNAMBIGUOUS INTENT OF THE TOWNSHIP BOARD IN PROHIBITING THE KEEPING OF LIVESTOCK IN THE RB ZONING DISTRICT WAS TO PROHIBIT ALL LIVESTOCK, INCLUDING ALL SWINE.**
- THAT SECTION 23.8.0 SPECIFICALLY PROHIBITS THE ZONING BOARD OF APPEALS FROM MAKING ANY CHANGES TO THE TERMS OF THE ORDINANCE, OR TAKING ANY ACTION WHICH RESULT IN EFFECT, IN MAKING SUCH LEGISLATIVE CHANGES.**
- THAT AN INTERPRETATION THAT POT BELLY PIGS (SWINE) DIDN'T FALL WITHIN THE DEFINITION OF LIVESTOCK IN THE ORDINANCE WOULD RESULT IN A CHANGE TO THE ORDINANCE FOR THE SIMPLE FACT THAT IT WOULD ABROGATE THE DEFINITION OF SWINE AND STRIKE IT FROM THE CLEAR DEFINITION OF LIVESTOCK SET FORTH THEREIN.**
- THAT A FINDING BY THIS BOARD THAT ELIMINATED SWINE FROM THE DEFINITION OF LIVESTOCK WOULD BE AN ULTRA VIRES ACTION OF THE BOARD GIVEN THAT SECTION 23.8.0 OF THE ORDINANCE SPECIFICALLY PRECLUDES THE ZONING BOARD OF APPEALS FROM RENDERING A DECISION THAT RESULTED IN A MODIFICATION OR CHANGE TO THE ORDINANCE.**

THEREFORE, THE ZONING BOARD OF APPEALS AFFIRMS THE DECISION OF THE ZONING ADMINISTRATOR THAT THE RAISING OR KEEPING OF A POT-BELLY PIG IS NOT A PERMITTED USE IN A RB RESIDENTIAL ZONING DISTRICT.

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Ms. Laforet reiterated the fact that Section 3.17.0 A of the Zoning Ordinance reads that the keeping of household pets, including dogs, cats, fish, birds, hamsters, and other animals generally regarded as household pets, is permitted as an accessory use in any agriculturally and residentially zoned districts. Ms. Laforet said as pot belly pigs are only regarded as household pets and never regarded as livestock, she would be voting against the motion because she felt pot belly pigs were being classified as livestock when in fact the animal has not ever been used as livestock in the United States.

Mr. Arking noted that pot belly pigs were swine which was livestock.

Ms. Laforet said that was true, but you can't necessarily have a tiger which was in the family of cats which was the reason why she felt this issue needed to go back to the Township Board to amend the Zoning Ordinance so as not to clarify or specify each and every genus of animal, but rather to clarify the actual intent and what each of these animals was generally used for. Ms. Laforet used the example of chickens that were primarily raised and used as livestock, but pot belly pigs were not. She felt the Township would continue to have other instances, especially as various emotional support and service animals were introduced. Ms. Laforet reiterated her opinion that this issue needed to be addressed because pot belly pigs were regarded as household pets.

Mr. Hicks said he didn't know whether there would be much disagreement on this Board about whether or not the Zoning Ordinance should be revised, but the Zoning Board of Appeals was considering a pot belly pig which was a swine and while you could attempt to come in under the household pet portion of the Zoning Ordinance, the ordinance contained a specific section that dealt with swine and that the Zoning Board of Appeals was bound by Section 1.3.0 A. He reiterated the fact that the Zoning Board of Appeals didn't have any leeway as it related to a specific versus a general description and that the Zoning Ordinance was specific in that the more restrictive language must be applied. Mr. Hicks said for fear of reversible error, while he felt it was applaudable that Ms. Laforet felt the Zoning Ordinance should be amended, the Zoning Board of Appeals was required to deal with the case before them and that the case before them this evening specifically spoke to swine as a definition of livestock.

Mr. Newman questioned when the Zoning Ordinance was adopted.

Mr. Graham stated that the Zoning Ordinance was adopted in 1990, but there had been numerous amendments made to the Ordinance, but he didn't think that Section 3.17.0, or the definition of livestock had been amended.

Ms. Parr felt there was a gray area between Section 3.17.0 where it referred to household pets and Section 1.3.0 where it referred to the Zoning Administrator applying the more restrictive language. However, Ms. Parr didn't feel the Zoning Board of Appeals was required to apply the more restrictive language.

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Mr. Graham stated that Section 1.3.0 A of the Zoning Ordinance reads that “where any condition imposed by any provisions of this ordinance upon the use of any lot, building, or structure is either more restrictive or less restrictive than any comparable condition imposed on any other provision of this ordinance, or by the provision of any ordinance adopted under any other law, the provision which is more restrictive or imposes the higher standard or requirement shall apply”. Mr. Graham noted that Section 1.3.0 A didn’t refer to the Zoning Administrator, Zoning Board of Appeals, or anyone else. Mr. Graham then referred to Section 23.8.0, Limitations on Powers of Board of Appeals, which read “the Board of Appeals shall not alter or change the zone district classification of any property, make any change in the terms of this ordinance, or take any action that results in effect, making such legislative changes”. Mr. Graham suggested that if the Zoning Board of Appeals ignored that section of the ordinance, it could constitute amending the text of the ordinance.

Mr. Barnhart called for the question.

ROLL CALL VOTE. CARRIED 4-2 (LAFORET AND PARR). NEWMAN PASSED.

VII. NEW BUSINESS

Case No. V-13-4-12: Mr. Gary Mugnolo, resident at 1706 Elmwood Road, is seeking a variance for a 1 foot, 9 inch encroachment into a required side yard setback in the RB, Low Density Residential, zoning district for a carport/house addition per Schedule B of the Zoning Ordinance.

Mr. Gruba informed the Board that the applicant was requesting a variance in order to add a carport/house addition onto an existing residence located on Elmwood Road. He noted that a detached garage currently existed on the site and that the applicant wished to add a carport that would have openings on two sides in order to allow vehicles to be driven through the carport and into the garage. Mr. Gruba informed the Board that RB zoned parcels were allowed up to 1,000 square feet of detached accessory structure coverage and that no detached structure may exceed 770 square feet. He noted that the existing detached garage consisted of 528 square feet and the proposed carport would measure 486 square feet for a combined total of 1,014 square feet. However, he noted that if the carport was detached from the house, it would be considered an accessory structure and would therefore exceed the maximum area permitted for accessory structures. Mr. Gruba indicated that any part of a house in the RB zoning district must be setback at least 8 feet from the side property lines and the applicant was proposing a 6 foot 3 inch setback which would be an encroachment of 1 foot 9 inches into the side yard setback. Mr. Gruba noted that if the carport was moved further to the north, it wouldn’t line up with the existing detached garage which would allow vehicles to be driven through. Mr. Gruba noted that detached structures were required to have a five foot setback from the property line, but since the carport would be attached to the house, an eight foot side setback from the property line would be required.

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Mr. Barnhart questioned why the applicant couldn't decrease the size of the proposed mudroom by 1 foot 9 inches so that a variance wouldn't be required.

Mr. Gruba said that was correct and that the applicant would not need the variance if the size of the mudroom was decreased. However, it was his understanding that the applicant was aligning the carport up with the opening of the existing garage. Mr. Gruba informed the Board that staff had only received one inquirer from the neighbor to the north who indicated that he didn't have any problems with the proposed carport addition since the addition would not be adjacent to his property.

Mr. Reed asked if there was anyone in the audience who would like to speak on this matter.

Gary Mugnolo, 1706 Elmwood Road, proceeded to review the four Basic Conditions for granting a variance by addressing Condition #1, the variance shall not be contrary to the public interest or to the intent and general purpose of the Zoning Ordinance because the owner of the property that would be primarily effected by the variance had stated that they didn't have any objections to the variance request. Mr. Mugnolo addressed Condition #2, the variance shall not permit the establishment within a district of any use which is not permitted by right or special use permit, by noting that he didn't feel the variance request would permit a use that was not permitted and that all he wanted to do was have a place where his wife could park her car. Mr. Mugnolo noted that he operated a business and that he wanted to better secure his equipment and supplies inside of his garage. Mr. Mugnolo addressed Condition #3, the variance shall not cause a substantial adverse effect upon properties in the immediate vicinity or in the zoning district in which the parcel is located by noting that the property owner located to the south of him had indicated that he didn't have a problem with the variance request and that he didn't believe it caused any adverse effects on adjacent properties. Mr. Mugnolo addressed Condition #4 by noting that his variance request only related to the property described in the application. Mr. Mugnolo felt his variance request satisfied Special Condition #1, where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this ordinance. These hardships or difficulties shall not be deemed solely economic, but shall be evaluated in terms of the use of a particular parcel of land. Mr. Mugnolo noted that he would like his wife to be able to park her car under cover and still be able to use his existing garage for a shop and storage for his equipment.

Mr. Barnhart inquired about decreasing the size of the mudroom.

Mr. Mugnolo noted that the mudroom was already completed. He indicated that the size of the mudroom didn't impact the carport because he was proposing to align the carport with the opening of his existing garage so that his belongings could be moved in and out of the garage without having to move the carport.

Mr. Hicks asked when the mudroom was built.

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Mr. Mugnolo informed the Board that the mudroom was built two weeks ago.

Mr. Hicks felt Mr. Barnhart was inquiring why the applicant didn't construct the mudroom somewhat smaller if he was aware of the fact that he would need a 1 foot 9 inch variance for the carport.

Mr. Mugnolo said the size of the mudroom was already very small. He indicated that the option of decreasing the size of the mudroom to eliminate the need for the variance was never brought up to him when he was working with staff on this matter.

Mr. Hicks felt the impetus of Mr. Barnhart's question was that the practical difficulty or unnecessary hardship was self created by virtue of the new construction and not by the carport itself.

Mr. Mugnolo said the mudroom and the carport were two separate projects and that there was never the intent to construct the mudroom in a way that would require him to obtain a variance for the carport.

Mr. Hicks didn't feel anyone would suggest that, but what was being suggested was that if the mudroom was constructed a little smaller, a variance wouldn't be necessary. Mr. Hicks said it would be different if the mudroom had been in existence for several years, but the difficulty in this case was the fact that the mudroom was recently constructed and the size of the mudroom was what was requiring a variance.

Mr. Mugnolo said he was a contractor and that he never would have thought that constructing his mudroom would have had any impact on him constructing a carport.

Mr. Hicks felt as a property owner, he would have determined how he could have constructed his carport without a variance by being able to shift it 21 inches.

Mr. Barnhart said he could not vote in favor of a variance when one wasn't needed to begin with.

Mr. Reed questioned if a variance would be needed if the applicant didn't attach the carport to the mudroom.

Mr. Gruba said a variance would still be needed because the size of the carport, combined with the size of the existing detached garage, would result in over 1,000 square feet of detached structure.

Mr. Reed noted that what he believed the applicant was attempting to do was align the carport with the existing detached garage but without a variance, the applicant would have an attached carport that was 21 inches shorter than the existing detached garage that would be

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narrower. Mr. Reed felt the point the applicant was trying to make this evening was that if the footings for the carport were moved 21 inches into what was now the exiting driveway, he wouldn't be able to drive into the existing detached garage.

Mr. Mugnolo said that was correct.

Mr. Hicks didn't feel that 21 inches would make much of a difference in this case. He felt the practical difficulty or hardship in this case was self created and that the need for a variance was due to the way the applicant had constructed his mudroom. Mr. Hicks didn't feel the Zoning Board of Appeals could grant a variance without satisfying all four basic conditions.

Mr. Mugnolo said he had lived in the Township for over 35 years and that he had heard about more and more people moving out of the Township because of things that were being done by the administration. Mr. Mugnolo said he worked on homes where things were done without permits and that he was trying to comply with the Township's regulations which was the reason why he applied for a variance.

Mr. Hicks noted that the Zoning Board of Appeals was attempting to work through the criteria that was required to be met when approving variance requests. Mr. Hicks took exception to Mr. Mugnolo's comment that more and more people were moving out of the Township because the Township's population continued to increase and he felt that most contractors would tell you that Delta Township was one of the easiest places in Mid-Michigan to do business.

Ms. Laforet understood Mr. Hicks and Mr. Barnhart's position on this matter, but she questioned if it would have created an undue hardship to construct a mudroom that was only 4.3 feet away from the house.

Mr. Hicks didn't feel that would have any bearing because the mudroom had already been constructed. He felt if the mudroom hadn't been built, the applicant would have been able to place the carport anywhere. He reiterated the fact that the construction of the mudroom determined the location of the carport.

Ms. Laforet asked the applicant if there was a way the carport could be 1 foot 9 inches narrower in size due to the fact that the need for a variance was self-imposed.

Mr. Mugnolo said he was just attempting to align the carport up with his existing garage.

Mr. Reed said when asking for a carport variance, he questioned whether the variance was at the edge of the drip line of the roof or at the edge of the foundation of the post.

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Mr. Gruba said the awning of the carport was allowed to extend out into the side yard and that the setback was measured from the wall of the carport.

Mr. Mugnolo said the dimensions that he had submitted were measured from the wall of the carport.

Mr. Reed said the applicant's support structure was in line with the wall of the existing garage overhang.

Mr. Mugnolo said that was correct.

Mr. Reed felt that if the applicant placed the support beams 21 inches inside the wall, it would match up with the existing garage.

Mr. Mugnolo said that was correct.

Ms. Laforet questioned if the applicant could move the footings 21 inches to the north resulting in a 16 foot 3 inch wide carport and still have enough room to park a car so that a variance wasn't needed.

Mr. Mugnolo felt it would work, but he hadn't considered it because he had filed for a variance. He said his only intent was to align the carport up with his garage so when you looked up the driveway, the carport lined up with the existing roof lines of the existing garage.

Mr. Reed questioned if the applicant were to come back before the Zoning Board of Appeals and raised the height of the carport and not attached it to the house, the variance that would be needed would be for the total square footage for a detached structure.

Mr. Gruba noted that the carport and the mudroom, as they exist, totaled 486 square feet and when you added that to the 528 square feet, it would result in over 1,000 square feet which was the maximum size for all detached structures. He noted that when Mr. Mugnolo first met with staff, he wanted to add that to his garage, however, a detached structure could not exceed 770 square feet which was why staff had recommended that he attach the carport to the house. Mr. Gruba said if the carport was made smaller and detached from the house, the applicant would still be able to comply with the five foot setback and if the mudroom didn't exist, a variance would not be required.

Mr. Arking questioned if the mudroom was considered part of the detached structure and not considered part of the house.

Mr. Gruba said at the present time, the mudroom was considered part of the house and therefore, this only had to conform to the side setback for a house. He said if the mudroom

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was eliminated, the carport became a detached structure and therefore, you could take away from the square footage of all construction. He said if the mudroom didn't exist, a variance would not be required.

Mr. Reed asked if any permits from the Township were required for the mudroom.

Mr. Gruba said a building permit was issued for the mudroom.

Ms. Laforet said the carport alone was 432 square feet and the garage was 528 square feet which totaled 960 square feet of detached building. She said if the mudroom was not attached to the house, she questioned if the carport could be built without attaching it to the mudroom.

Mr. Gruba said there was a zero setback between the carport and the mudroom and that staff would consider that attached whether there was a door to the carport or not. He said at the very least, there could be a one foot separation.

Ms. Laforet asked if the applicant would still need a variance from the side lot line even if the structure was detached and the mudroom didn't exist.

Mr. Gruba said that was correct because detached structures only required a five foot setback from the property line as opposed to the house.

Ms. Laforet felt the applicant could move the carport over 1.3 feet.

Mr. Mugnolo questioned if the carport would still be considered attached if the mudroom had a one inch gap between the roof of the mudroom and the carport. Mr. Mugnolo felt staff had informed him that if a 2' x 4' connected one building to another, it was considered attached.

Mr. Gruba noted that if there was a zero foot separation between two structures, then those two structures were considered attached.

Mr. Arking asked Mr. Mugnolo if constructing the carport higher than the mudroom and not attaching it to the house would be sufficient for his needs.

Mr. Mugnolo said he didn't understand what would be accomplished by constructing the carport higher than the mudroom.

Mr. Hicks felt there would be a zero foot setback regardless of the height of the structure.

Mr. Reed felt the Board needed to determine what constituted attached because to him it meant that the structure was physically attached. He said the Board has discussed this in the past where there was a case where an individual was trying to build a detached building and

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he had several detached buildings and would exceed the maximum amount of square footage allowable. The property owner decided to construct an attached building by nailing a 2' x 4' between the building and the house which was not acceptable. Mr. Reed felt this was something the Board needed to look into, specifically when reviewing the special conditions for granting a variance because clearly there was a hardship in this case and trying to determine what that hardship was.

Ms. Laforet questioned if either of the two options where the applicant constructed the carport 16'3" x 24' and attached it to the house or construct the carport unattached and move it over 1 foot 3 inches to the south and keep the carport the same as what the applicant had proposed, but move it over to the south if it was detached which would result in 1 foot 3 inches between the carport area and the mudroom. Ms. Laforet didn't feel Mr. Mugnolo would need a variance.

Mr. Hicks said the question of whether the structure was attached or detached wasn't before the Board this evening and that it was not something that was in the Board's purview to decide. He asked staff whether this matter could be rectified without the need for a variance.

Mr. Graham noted that Section 3.11.3 of the Zoning Ordinance states that when an accessory building was structurally attached to a principal building, shall be subject to and must conform, with all regulations of the ordinance applicable to principal buildings. He noted that the word "attached" was not defined in the ordinance and therefore he would use the common Webster term only separation needed for detached. He said when lacking a definition, you go to the common definition in the Webster dictionary.

Ms. Laforet asked Mr. Mugnolo if he intended to install a flat roof on the carport or a peaked roof.

Mr. Mugnolo noted that he intended to construct a peaked roof.

Mr. Hicks asked the applicant if he wanted to move forward with his request this evening, or confer with staff on this matter.

Mr. Mugnolo said he would like to move forward with his request this evening.

MOTION BY BARNHART, SECONDED BY HICKS, THAT THE PUBLIC HEARING BE CLOSED. VOICE VOTE. CARRIED 7-0.

Mr. Reed said he was looking at it from a standpoint as the way it had been described if the applicant had the opportunity to detach the structure from the house. He felt the carport could be moved even closer than the existing lot line because it would be a detached building and a variance wouldn't be needed. However, he said the Board had a situation this evening where the carport would look aesthetically better to keep the existing roof lines as they had

been proposed. Mr. Reed believed there were the four basic conditions that applied, as well as practical difficulties with the situation as well as unnecessary hardships that prevented the Board from carrying out the strict letter of the ordinance. Mr. Reed stated that he didn't have a problem with granting a variance this evening.

MOTION BY ARKING, SECONDED BY LAFORET, THAT CASE NO. V-13-4-12, GARY MUGNOLO, RESIDENT AT 1706 ELMWOOD ROAD, A VARIANCE FOR A 1 FOOT, 9 INCH ENCROACHMENT INTO A REQUIRED SIDE YARD SETBACK IN THE RB, LOW DENSITY RESIDENTIAL, ZONE FOR A CARPORT/HOUSE ADDITION PER SCHEDULE B OF THE ZONING ORDINANCE, BE GRANTED PROVIDED THE APPLICANT COULD OBTAIN THE NECESSARY BUILDING PERMITS AND THAT NO OTHER VARIANCES WOULD BE NEEDED TO COMPLETE THE PROJECT.

- 1. THE APPLICANT HAS MET THE FOUR BASIC CONDITIONS FOR GRANTING A VARIANCE.**
- 2. THE APPLICANT HAS MET SPECIAL CONDITION #1, WHERE THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS WHICH PREVENT CARRYING OUT THE STRICT LETTER OF THIS ORDINANCE. THESE HARDSHIPS OR DIFFICULTIES SHALL NOT BE DEEMED SOLELY ECONOMIC, BUT SHALL BE EVALUATED IN TERMS OF THE USE OF A PARTICULAR PARCEL OF LAND IN THAT THE APPLICANT WAS ATTEMPTING TO LINE UP THE PEAK OF THE CARPORT WITH THE PEAK OF THE GARAGE, AS WELL AS THE SOUTH WALL OF THE CARPORT WITH THE SOUTH WALL OF THE GARAGE. THE APPLICANT COULD NOT MOVE TOWARDS THE NORTH AT ALL TO ACCOMMODATE HIS GOAL AND WHETHER THE MUDROOM WAS THERE OR NOT WASN'T MATERIAL TO WHAT THE APPLICANT WAS ATTEMPTING TO ACCOMPLISH. WHILE IT WOULD HAVE BEEN BETTER PLANNING, THE STRUCTURE THE APPLICANT WANTED TO BUILD WAS A STRUCTURE ANYONE MAY WANT TO BUILD AND THE APPLICANT SHOULD HAVE THE RIGHT TO BUILD THE STRUCTURE LIKE EVERYONE ELSE IN THE NEIGHBORHOOD.**

Mr. Hicks encouraged the Board to trend lightly on aesthetics as a practical difficulty because it binds this Board going forward.

VOICE VOTE. CARRIED 5-2 (Barnhart and Hicks).

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VIII. OTHER BUSINESS - None

IX STAFF COMMENTS

X BOARD COMMENTS

Mr. Reed expressed concern with signage that had been placed along Marketplace Boulevard.

Mr. Graham informed the Board that staff became aware of the signage yesterday and when staff went in the field today, they had found that all of the signage had been removed. Mr. Graham noted that staff had spoken to the store manager of Five Below and informed him that temporary signage required a permit.

Mr. Reed asked staff how many fines the Township had levied against businesses or individuals who repeatedly violated the Township's Sign Ordinance.

Mr. Graham noted that he didn't have an exact number at hand, but that staff does ticket businesses that violate the sign ordinance. He noted that businesses that repeatedly violate the sign ordinance may view tickets as "a cost of doing business".

Mr. Reed felt the Township may want to look into increasing the Sign Ordinance's fines for repeat offenders.

Mr. Graham felt staff confiscating signs has helped to deter the placement of illegal signage in the past. He informed the Board that he had requested the Township Board allocate \$50,000 in the 2014 Township Budget for the review/rewrite of the Township's Zoning Ordinance and Sign Ordinance.

Mr. Barnhart brought up a few concerns he had with signage that he would like looked at during the review of the Sign Ordinance.

XI ADJOURNMENT

Chairman Reed adjourned the meeting at 7:20 p.m.

DELTA CHARTER TOWNSHIP
Mary Clark, Secretary to the Zoning Board of Appeals

Minutes prepared by Anne Swink